

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: December 7, 2006)

DO NOT PUBLISH

|  |   |                                   |
|--|---|-----------------------------------|
| KARL ITTMANN and KELLY MCCORD,                   | ) |                                   |
| parents and natural guardians of their daughter, | ) |                                   |
| NEAVE ITTMANN,                                   | ) |                                   |
|  | ) |                                   |
| Petitioners,                                     | ) |                                   |
|  | ) |                                   |
| v.   | ) | No. 01-0564V                      |
|  | ) | Attorneys' Fees; Attorneys' Costs |
| SECRETARY OF                                     | ) |                                   |
| HEALTH AND HUMAN SERVICES,                       | ) |                                   |
|  | ) |                                   |
| Respondent.                                      | ) |                                   |
|  | ) |                                   |

DECISION ON ATTORNEYS' FEES AND ATTORNEYS' COSTS<sup>1</sup>

Petitioners, Karl Ittmann and Kelly McCord (Mr. Ittmann and Ms. McCord), as natural guardians of their daughter, Neave Ittmann (Neave), seek an award of \$30,453.52 in attorneys' fees and attorneys' costs for an action that they pursued under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> *See* Petitioner's [sic] Status Report (Fee Petition), filed November 30, 2006. Mr. Ittmann and Ms. McCord represent that they did not incur any personal expenses as defined by General Order No. 9. *See* Petitioner and Counsel Statement (Statement), filed December 4, 2006. Respondent does not object apparently. *See* Fee Petition.

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<sup>1</sup> As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

<sup>2</sup> The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

Mr. Ittmann and Ms. McCord did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to “award an amount of compensation to cover” Mr. Ittmann’s and Ms. McCord’s “reasonable attorneys’ fees and other costs” as long as “the special master or court determines that” Mr. Ittmann and Ms. McCord possessed “a reasonable basis for the claim” and that Mr. Ittmann and Ms. McCord filed the petition “in good faith.” § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master’s “discretion is not without limit.” *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent “special circumstances,” the special master “should ordinarily” award attorneys’ fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully Mr. Ittmann’s and Ms. McCord’s Fee Petition. Based upon his experience, the special master determines that the Fee Petition is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Mr. Ittmann’s and Ms. McCord’s favor for \$30,453.52 in attorneys’ fees and attorneys’ costs. The judgment shall provide that Mr. Ittmann’s and Ms. McCord’s attorney of record, Ronald C. Homer, Esq. (Mr. Homer), may collect \$13,962.48 from Mr. Ittmann and Ms. McCord. *See* Fee Petition. In addition, the judgment shall provide that Mr. Ittmann’s and Ms. McCord’s former counsel, Williams and Bailey, may collect \$9,710.20 from Mr. Ittmann and Ms. McCord. *See* Fee Petition. Further, the judgment shall provide that Mr. Ittmann’s and Ms. McCord’s former counsel, Shoemaker and Associates, may collect \$6,780.84 from Mr. Ittmann and Ms. McCord. *See* Fee Petition.

Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

s/John F. Edwards  
John F. Edwards  
Special Master